

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

J. P. ...
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FILE: B-192604

DATE: October 31, 1978

MATTER OF: Kurz-Kasch, Inc.--Request for
Reconsideration

DIGEST:

1. Protester's contention that it was denied opportunity to receive and rebut agency's report in original protest is without merit because GAO obtained no such agency report. Original protest fell within the ambit of GAO decisions which hold that where it is clear from a protester's submissions that the protest is without legal merit, matter will be decided on the basis of the protester's submission without obtaining a report from the procuring activity.
2. Below-cost bids are discouraged but not prohibited by procurement regulations, so GAO will not object to award of contract on this basis.
3. Prior decision dismissing protest is affirmed since protester neither presents evidence demonstrating any error of fact or law, nor does it provide substantive information not previously considered.
4. Request for conference on reconsideration is denied where matter can be promptly resolved without a conference.

Kurz-Kasch, Inc. (Kurz), requests reconsideration of its protest decided in Kurz-Kasch, Inc., B-192604, September 8, 1978, 78-2 CPD___, which summarily dismissed the protest.

Kurz protested the procurement on the grounds that the awardee's bid was a "Buy-In" which could only result in a loss contract, and further, that the awardee was not capable of producing the product required.

In dismissing the protest we stated:

"The protester's initial submission raises issues which we have determined to be not

reviewable by this Office. We have held that the possibility of a "Buy-In" or the submission of a below cost bid is not a proper basis upon which to challenge the validity of a contract award. Inter-Con Security Systems, Inc., B-189165, July 15, 1977, 77-1 CPD 434. Proper rejection of a bid as extremely low requires a determination that the bidder is nonresponsible or incapable of performance. See Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. However, this Office does not review protests which question an affirmative determination of responsibility, such as the one made in the instant case, except in circumstances not pertinent here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64."

In its request for reconsideration Kurz contends that it was denied the opportunity to receive a copy of and rebut arguments contained in the contracting agency's report. Kurz refers to our Bid Protest Procedures at 4 C.F.R. § 20.3(c) and (d) (1977) which outline our normal case development process of requesting an agency report and allowing the protester to comment thereon. In the Kurz protest, however, there was no contracting agency report, and the matter was decided on the basis of the protester's submission without obtaining a report from the procuring activity because it was clear from the protester's submissions that the protest was without legal merit or not reviewable under our procedures. This has been our practice in a number of cases. See, for example, Fire & Technical Equipment Corp., B-192408, August 4, 1978, 78-2 CPD 91; Midwest Service and Supply Co. and Midwest Engine, Inc., B-191554, July 13, 1978, 78-2 CPD 34; Brawell Shipyards, Inc., B-191451, March 24, 1978, 78-1 CPD 233; Western Branch Diesel, Inc., B-190407, December 21, 1977, 77-2 CPD 494 and cases cited therein.

Although Kurz contends that an agency report was necessary to determine whether the Army had, pursuant to Defense Acquisition Regulation (DAR) § 1-311, taken "certain steps and techniques to avoid or minimize a 'Buy-In'," we do not pursue such allegations. We note

that although DAR § 1-311 discourages a "Buy-In," it does not prohibit one. As such, we would not have a legal basis for objecting to the award of a contract even if a "Buy-In" could be established. Inflated Products Company, I.c., B-190877, May 11, 1978, 78-1 CPD 362; IMBA, Incorporated, B-188346, B-187404, November 9, 1977, 77-2 CPD 356.

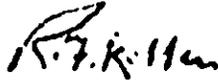
Kurz further reiterates its opinions concerning the alleged "Buy-In" and refers to a letter it sent to the Secretary of the Army concerning the procurement in question and urging that we consider its contents. After review of the reconsideration correspondence, including a copy of the Kurz letter to the Secretary of the Army, we conclude that the Kurz request neither presents evidence demonstrating any error of fact or law in the original decision, nor does it provide substantive information not previously considered. We find, therefore, no basis for our reconsideration in this matter. 4 C.F.R. § 20.9(a) (1977); Marphy Pacific Marine Salvage Company--Reconsideration, B-190678, May 19, 1978, 78-1 CPD 386; Science Spectrum--Request for Reconsideration, B-189886, February 9, 1978, 78-1 CPD 111; CDI Marine Company--Request for Reconsideration, B-188905, January 5, 1978, 78-1 CPD 5.

We note that Kurz also requests a conference prior to our reconsideration of this matter. However, our Bid Protest Procedures do not explicitly provide for conferences upon reconsideration. See 4 C.F.R. § 20.9 (1977). It is the intent of the procedures to effect "prompt resolution" of reconsideration requests and we believe a request for a conference should be granted only where the matter cannot be promptly resolved without a conference. In our judgment, this is not such a case. See International Business Machines Corp.--Reconsideration, 56 Comp. Gen. 875 (1977), 77-2 CPD 97.

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In view of the foregoing, our decision in Kurz-
Kasch, Inc., supra, is affirmed.



Deputy Comptroller General
of the United States